

January 15, 2002

GSA Acquisition Letter **MV-02-01**

MEMORANDUM FOR ALL GSA CONTRACTING ACTIVITIES

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FOR ACQUISITION POLICY (**MV**)

SUBJECT: Evaluating Contractor Performance

1. Purpose. This Acquisition Letter issues the GSA policy that a contractor's filing of a protest or claim, or electing not to participate in an Alternative Dispute Resolution (ADR) process, cannot be used as a basis for adversely affecting the performance evaluation required at FAR 42.15 and GSAM 542.15.

2. Background.

a. The purpose of periodically evaluating contractor performance and collecting past performance information is to improve the quality of the products, services, construction and real estate we acquire and thus the return on investment to the taxpayer. This requires that we maintain a continuous and open dialogue with the contractors we do business with, providing them with feedback on their performance based on appropriate program and contract data. The periodic performance evaluation a contractor earns should never be a surprise so it is important to provide timely feedback throughout the performance period.

b. FAR 42.1501 offers some elements of contractor performance that should be considered when developing the evaluation. It

provides that:

"Past performance information is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. It includes, for example, the contractor's record of conforming to contract requirements and to standards of good workmanship; the contractor's record of forecasting and controlling costs; the contractor's adherence to contract schedules, including the administrative aspects of performance; the contractor's history of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the contractor's business-like concern for the interest of the customer."

c. GSAM 542.1503-71 provides further examples of the types of performance data appropriate for your consideration and includes "customer oriented behavior."

3. Effective Date. January 15, 2002.

4. Termination Date. One year or until incorporated in the General Services Administration Acquisition Manual (GSAM).

5. Applicability. This Acquisition Letter applies to all GSA contracting activities and to all contracts GSA issues or administers, including those used by other agencies. Each service should take appropriate steps to inform their client agencies that use GSA contract vehicles, such as the Multiple Award Schedules Program and other GSA governmentwide acquisition contracts, of the policy set forth in paragraph 6.

6. Policy.

a. A contractor's judicious exercise of a process protection is not evidence of unreasonable or uncooperative behavior or a lack of customer focus. The exercise of these protections by a GSA contractor may not adversely affect the performance evaluation of the contractor under the contract by GSA or any eligible users of the contract. Therefore, absent a clear pattern of frivolous or bad faith exercise of such protections, you cannot downgrade a contractor's performance for filing a protest or claim, or declining to participate in an ADR process.

b. While you should not consider the exercise of these process protections in developing the performance evaluation, the Office of Federal Procurement Policy's May 2000 guide entitled "Best Practices for Past Performance," recommends that you update the evaluation record to reflect when a contractor submits a claim disputing the performance evaluation itself. This is not done to imply uncooperative behavior but to advise source selection teams that a performance evaluation is in dispute.

► Validation